

James G. Edmiston
EDMISTON & COLTON
310 Grand Avenue
Billings, MT 59101

Phone: 406\259-9986
FAX: 406\259-1094

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

NANETTE BEAUDOIN and
ANTHONY THERRIEN, husband and
wife,

Plaintiffs,

vs.

J.B. JUSTICE & COMPANY,
WALTER CAMPOS, and SPARTA
INSURANCE COMPANY,

Defendants.

CV _____

**COMPLAINT AND
DEMAND FOR JURY
TRIAL**

For their claim against Defendants, Plaintiffs state:

PARTIES

1. Plaintiffs, Nanette Beaudoin and Anthony Therrien, are husband and

wife who are now and have been at all times mentioned herein citizens and residents of Hawksbury, Ontario, Canada.

2. Defendant, J.B. Justice & Company, is a corporation organized under the laws of, and with its principal place of business in, a state other than Montana. Plaintiffs state upon information and belief that J.B. Justice & Company is an interstate trucking company headquartered out of Houston, Texas.

3. Defendant Walter Campos, is an individual believed by Plaintiffs to be a resident of Texas, who was employed by, or contracted with, Defendant J.B. Justice & Company on January 17, 2011 as a semi-truck driver.

4. Defendant Sparta Insurance Company is an insurance company organized under the laws of Texas. Upon information and belief, Sparta Insurance Company's principal place of business is Connecticut.

JURISDICTION AND VENUE

5. Subject matter jurisdiction of this action is based upon 28 U.S.C. section 1332, in that this action involves a dispute between citizens of different countries and claims in excess of \$75,000.

6. This Court has personal jurisdiction over Defendant J.B. Justice & Company by reason that J.B. Justice & Company is authorized to transact

business in the State of Montana and engages in interstate commerce as a trucking company.

7. This Court has personal jurisdiction over Defendant Walter Campos because he was driving a semi-truck on U.S. Highway 87 near Belt, Montana for J.B. Justice & Company when he caused a motor vehicle collision on January 17, 2011.

8. This Court has personal jurisdiction over Defendant Sparta Insurance Company by reason that Sparta Insurance Company is authorized to transact business in the State of Montana and insures J.B. Justice & Company, a trucking company engaged in interstate commerce.

9. Venue for this action is proper in this District pursuant to 28 U.S.C. section 1391(a).

10. The relevant acts, decisions, and events giving rise to this claim accrued in Montana.

FACTS

11. On or about January 17, 2011, Plaintiff Nanette Beaudoin was driving her 2007 Volkswagen diesel tractor-truck pulling a freezer trailer loaded with about 40,000 pounds of frozen french fries. Nanette was driving and hauling freight for Challenger Motor Freight and Lodwick Transport, Ltd.,

which are both Canadian companies. Nanette was driving her rig eastbound on U.S. Highway 87 outside of Belt in Judith Basin County, Montana.

12. At the same time Defendant Walter Campos was driving a semi-truck owned by J.B. Justice westbound on U.S. Highway 87. Near milepost 20 Defendant Campos negligently lost control of his vehicle and started to slide into the eastbound lane of traffic.

13. Nanette Beaudoin maneuvered her rig to the right side of the highway upon seeing Defendant Campos's rig coming into her lane. Defendant Campos applied his brakes, which caused his trailer to swing into Nanette's lane. Then Defendant Campos's trailer hit Nanette Beaudoin's rig in her lane of traffic. After impact Defendant Campos's rig continued sliding sideways and struck another two cars. Nanette Beaudoin's rig stopped on the road embankment and overturned.

14. Defendant Campos was negligent for driving too fast for road conditions. Defendant Campos was also negligent for crossing the centerline of the highway and striking Nanette Beaudoin's rig in her lane of traffic.

15. Plaintiff Nanette Beaudoin has incurred medical expenses, may incur future medical expenses, has lost earnings from self-employment as a result of her injuries and damages to her tractor-truck, has lost earning capacity, has suffered a

reduction in ability to enjoy life, a change in the course of lifestyle, and has suffered physical pain and mental anguish.

16. Plaintiff Nanette Beaudoin also lost use of her 2007 Volkswagen diesel tractor-truck as a result of Defendant Walter Campos's and J.B. Justice & Company's negligence.

17. Plaintiff Anthony Therrien has provided care and support for his wife Nanette Beaudoin after her injury. Her injury has adversely affected their relationship. Plaintiff Anthony Therrien has suffered a loss of consortium as a result of his wife's injury.

COUNT ONE – NEGLIGENCE

18. Walter Campos was negligent by driving his rig too fast for conditions, for crossing the centerline of the highway, and for colliding with Nanette Beaudoin's rig. J.B. Justice & Company is liable for the negligent acts of Walter Campos, its employee.

19. Walter Campos's and J.B. Justice's negligence caused Plaintiffs' damages.

COUNT TWO – NEGLIGENCE PER SE

20. Walter Campos was negligent per se because he violated Montana

statutes including but not limited to sections 61-8-302, 303, 311, 322, and 328, MCA.

21. Walter Campos's and J.B. Justice & Company's negligence caused Plaintiffs' damages.

22. The damages suffered by Plaintiffs are of the type that these statutes were designed to prevent.

COUNT THREE – DECLARATORY JUDGMENT

23. Plaintiffs are entitled to a declaration of rights to insurance proceeds under the Montana Uniform Declaratory Judgment Act, section 27-8-101, *et. seq.* MCA.

24. Defendant Walter Campos's and J.B. Justice Company's negligence and liability in causing Plaintiff Nanette Beaudoin's injuries is reasonably clear.

25. Pursuant to the Montana Supreme Court's decision in *Ridley v. Guaranty Nat. Ins. Co.*, 286 Mont. 325, 951 P.2d 987 (1997) Plaintiffs submitted medical records and bills to Defendant Sparta Insurance Company for payment.

26. Plaintiff Nanette Beaudoin has lost earnings and continues to lose earnings as a result of Defendants Walter Campos's and J.B. Justice Company's negligence.

27. Despite demands, Defendant Sparta Insurance Company failed to pay

Plaintiff Nanette Beaudoin's medical bills. Plaintiffs request that this Court issue a declaratory judgment pursuant to §27-8-102, MCA, and *Safeco Insurance Company of Illinois v. Montana Eighth Judicial District Court, Cascade County*, 2000 MT 153, 2 P.3d 834, 300 Mont. 123, that Defendant Sparta Insurance Company is responsible for paying Plaintiff's medical bills in advance of settlement or verdict.

28. Plaintiff requests that this Court issue a declaratory judgment pursuant to §27-8-102, MCA, and *Dubray v. Farmers Insurance Exchange*, 2001 MT 251 that Defendant Sparta Insurance Company is responsible for paying Plaintiff Nanette Beaudoin's gross lost earnings in advance of settlement or verdict.

29. Pursuant to §27-8-313, MCA and *Trustees of Indiana University v. Buxbaum*, 2003 MT 97, 315 Mont. 210, 69 P.3d 663, Plaintiffs requests that the Court award their reasonable attorney fees in bringing this declaratory judgment count against Sparta Insurance Company.

30. Plaintiffs also request an award of prejudgment interest on the medical bills which were submitted, but not timely paid by Sparta Insurance Company.

WHEREFORE, Plaintiffs request judgment in their favor as follows:

1. For Plaintiff Nanette Beaudoin's actual and general damages as a result of Defendants Walter Campos's and J.B. Justice & Company's wrongful acts as may be determined by the jury's verdict at trial;
2. For Plaintiff Anthony Therrien's loss of consortium damages to Plaintiffs' marital relationship as may be determined by the jury's verdict at trial;
3. For judgment declaring that Sparta Insurance Company has a duty to pay Nanette Beaudoin's medical expenses and lost earnings in advance of any settlement or verdict pursuant to *Ridley v. Guaranty Nat. Ins. Co.*, 286 Mont. 325, 951 P.2d 987 (1997), *DuBray v. Farmers Ins. Exchange*, 307 Mont. 134, 36 P.3d 897 (2001), and *Safeco Insurance Company of Illinois v. Montana Eighth Judicial District Court, Cascade County*, 2000 MT 153, 2 P.3d 834, 300 Mont. 123.
4. For attorney fees pursuant to §27-8-313, MCA, *Trustees of Indiana University v. Buxbaum*, 2003 MT 97, 315 Mont. 210, 69 P.3d 663, and other applicable Montana law.
5. For pre-judgment interest and costs as may be allowed by law.

PLAINTIFFS DEMAND A JURY TRIAL

DATED this 3rd day of January, 2013.

/s/ James G. Edmiston

James G. Edmiston
EDMISTON & COLTON
Attorneys for Plaintiffs